Competition

• Is “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective for example, profits, sales or market share” (World Bank, 1999)

• Is “an essential hand maiden to efficient trade.”

• The ultimate raison d’etre of competition is the interest of the consumer.
Competition (Continued)

- Is the foundation of an efficient working market system, which has several advantages over a planned economy and constitutes the pre-condition which prevents freedom of decision and action of self-interested individuals or entities from leading to anarchy or chaos but rather to economically optimal socially fair and desirable market results. (Report of High Level Committee on Competition Policy, Deptt. of Company Affairs, 2000).

- Competition leads to greater dynamic efficiency in the economy by bringing about innovation, technological development, lower price and better quality and service for the consumer.
Competition Law & Policy

• In India, Competition Law and Policy are relatively new concepts.
• However in various developed countries, it has long history e.g. Canada enacted its first Competition Law in 1889.
• In the 1890s, many of the states of USA enacted Competition Laws. The Federal Government of USA enacted the (Sherman Anti-trust Act [1890]), Clayton Act (1914) and Fair Trade Commission Act (1914).
• As of today more than 90 countries have Competition Acts.
• There is an international Competition Network and a Global Forum on Competition (OECD).
Competition Law

• The need for Competition Law arises because market can suffer from failures and distortions, and various players can resort to anti-competitive activities such as cartels, abuse of dominance etc. which adversely impact economic efficiency and consumer welfare.

• Thus there is need for Competition Law, and a Competition Watchdog with the authority for enforcing Competition Law.
Promotion of Competition

• For promotion of competition in the market an appropriate competition policy is required.

• Competition policy includes “those government measures that directly affect behaviour of enterprises and structure of industry.” (Khemani and Mark Dutz 1996)
Elements of Competition Policy

*Competition policy has two elements:* :-

- Putting in place a set of *Policies* that enhance competition in local and national markets.
- A *Law* designed to prevent anti competitive business practices and unnecessary government intervention.
It includes Reforms in certain Policy areas to make these more pro-competition:-

- Industrial policy
- Trade policy
- Privatization/disinvestment
- Economic Regulation
- State aids
- Labour policy
- Other such policies
Industrial Policy

• Industrial Policy has to address and reform licensing requirements, restrictions on capacities, or on foreign technology tie ups, guidelines on location of industries, reservations for small scale industry, etc. These adversely affect free competition in the market.
Trade Policy

• Trade policy has important implications for development of competition in the markets. Measures for liberalisation of trade promote greater competition e.g. reducing tariffs, removal of:

quotas/physical controls, investment controls, conditions relating to local content etc.
Privatisation/Disinvestment

- Empirical research has found that state-owned enterprises generally tend to be less efficient than private owned firms, for reasons such as manager compensation, low incentives, lack of direct accountability, hard budget constraints for managers, etc.

- State owned enterprises are generally insulated from market forces and receive protection/benefits such as government imposed barriers to entry, price regulation and subsidies.

- Thus privatization of state owned enterprises is important element of competition policy.

- However, in privatization/ disinvestment process, care is to be taken that state monopoly is not replaced by private monopoly.
Economic Regulations

• New legislation and regulations to promote competition and to bring about restructuring of major industrial sectors is essential. Legislation to aim at separating natural monopoly elements from potentially competitive activities, and the regulatory functions from commercial functions, and also create several competing entities through restructuring of essential competition activities and to create a competitive environment in following sectors.

Examples

– Electricity sector
– Telecommunications sector
– Ports
State Aids

• Several state aids create unequal operating conditions for businesses. Examples
  – Subsidies
  – Tax rebates
  – Preferential loans
  – Capital injection
  – Public procurement

• Experience suggests that such policy measures rarely have successful results and destroy incentives for firms to become efficient.

• Temporary specific state-aid for well stated public purpose can be justified.
Competition Law

• It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market.

• Competition Law generally covers 3 areas:
  – Anti-Competitive Agreements, e.g., cartels,
  – Abuse of Dominant Position by enterprises, e.g., predatory pricing, barriers to entry and
  – Regulation of Mergers and Acquisitions (M&As).
Background to India’s Competition Law

Earlier Law

MRTP Act enacted in 1969

- Belongs to the era of controlled economy, as against the market based economy
- Objectives were to prevent concentration of economic power, to control monopolies, and to prohibit monopolistic and restrictive trade practices
- Major amendments to MRTP Act undertaken in
  - 1984 – major addition was relating to Unfair Trade Practices,
  - 1991 – deletion of Chapter relating to Mergers and Acquisitions, and
  - Addition relating to Award of Compensation.
Competition Act 2002

- An Act to establish a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect interest of consumers and to ensure freedom of trade carried on by other participants in markets, in India

- Under the Act the Commission can enquire and adjudicate in respect of
  - Anti-Competitive Agreements
  - Abuse of Dominant Position
  - Regulation of Mergers and Acquisitions
  - Commission also has responsibility to undertake Competition Advocacy
Anti-competitive Agreements

These are agreements which cause or are likely to cause an appreciable adverse effect on competition within India:

*Horizontal Agreements:*

- These are between and among competitors who are at the same stage of production, supply, distribution, etc.
- These are presumed to be illegal
- Examples: cartels, bid rigging, collusive bidding, sharing of markets, etc.
Vertical Agreements:

• Vertical Agreements are between parties at different stages of production, supply, distribution, etc.
• These are not presumed illegal; are subject to rule of reason.
• Examples: tie-in arrangements, exclusive supply/distribution agreements, refusal to deal.
Abuse of Dominant Position

*Includes practices like:*

- Unfair or discriminatory conditions or prices,
- Limiting or restricting production or technical/scientific development,
- Denial of market access, and
- Predatory pricing.
Mergers and Acquisitions

• Commission to regulate “Combinations”, i.e., large mergers, acquisitions, etc. likely to have appreciable adverse effect on competition.

• **Threshold:**
  
  *For single enterprise*
  – Assets > Rs.1000 crores
  – Turnover > Rs.3000 crores

  *For group of enterprises*
  – Assets > Rs.4000 crores
  – Turnover > Rs.12000 crores

• Similarly, threshold provided for overseas enterprises/groups.
Mergers & Acquisitions
(Continued)

• Notification of Combination to Commission is voluntary

• If notified, Commission to take a decision within 90 days on the combination. Decision may allow, disallow, modify, etc. the combination.
Some Important Cases

Anti-competitive Agreements

Vitamin Cartel Case

• The US anti-trust authorities have unveiled an international price fixing conspiracy involving several leading and sophisticated pharmaceutical manufacturers of the world. These companies lead a global conspiracy to fix prices of Vitamins, allocate markets, supply contracts and sales volume, apart from bid-rigging at various times. Majority of the colluding firms admitted their involvement in the cartel. Roche agreed to pay US$ 500 mn fine. On the other hand, ROCHE - Poulenc escaped punishment and supplied much of evidence.

• Lysine Cartel

Citric Acid Cartel
Some Important Cases
(Continued)

Abuse of Dominant Position

Microsoft Case

• EC concluded, after a five-year investigation, that Microsoft Corporation broke European Union Competition Law by leveraging its near monopoly in the market for PC operating system (OS) onto the markets for work group server operating systems and for media players. Because the illegal behaviour was ongoing, the Commission ordered Microsoft to disclose to competitors, within 120 days, the interfaces required for their products to be able to ‘talk’ with the ubiquitous Windows OS. Microsoft was also required, within 90 days, to offer a version of its Windows OS without Windows Media Player to PC manufacturers. In addition, Microsoft was fined US $613 mn (Euro 497 mn) for abusing its market power in the EU.
Some Important Cases
(Continued)

**Combinations (Mergers and Acquisitions)**

- Proposed combination of Boeing and McDonnel - Douglas relating to aircraft industry was allowed by US Anti-trust Authorities, but was refused by European Commission.
- Combination of General Electric and Honeywell relating to Jet Engines was allowed by US Anti-trust Authorities but refused by European Commission.
Powers of Commission

- Cease and desist order
- Impose penalty up to 10% of turnover.
- In case of cartel, penalty can be 10% of turnover or 3 times of profit illegally gained from cartel activity, whichever is higher.
- Recommend to Government the division of dominant enterprise
- Various penalties ranging from Rs.1 lac upto Rs.1 crore are also provided for failure to comply with direction/order of Commission.
Suo Motu Inquiry

• Commission has suo motu power to enquire whether an Anti-Competitive Agreement or Abuse of Dominant Position causes or is likely to cause an appreciable adverse effect on competition
Suo Motu Inquiry (Continued)

- Commission has suo motu power to enquire whether a combination causes or is likely to cause an appreciable adverse effect on competition.
- This power must be exercised within one year from the date combination has taken effect.
Government had decided to phase the Commission’s work in the following manner:

- **First year** – Competition Advocacy
- **Second year** – Adjudication of Anti-Competitive Agreements and Abuse of Dominant Position
- **Third year** – Regulation of Combinations (M&As)
Competition Advocacy

• Commission has responsibility to promote Competition Advocacy, create awareness and impart training about competition issues.

• Competition Advocacy would include giving opinion or intervening in policies relating to trade liberalization, economic regulation, state aids, privatization and operations of local government authorities.

• Public awareness is to be promoted through conferences, seminars, workshops, publishing of enforcement decisions, promulgation of guidelines on specific policy areas, effective website, etc.

• Advocacy also includes giving its opinion, when sought by government, on competition related issues; but opinion is not binding on government
Status of the Commission

• It is a body corporate
• It has Regulatory and quasi-judicial powers; functions through Benches
• Each Bench shall consist of at least two Members and one of such Members must be a judicial Member
Present Position of Commission

• Commission was established in October 2003
• One Member entered Office in October 2003
• Presently, Commission engaged in preparatory and infrastructure work in following areas:
  – Administrative work: office premises, infrastructure services, foreign assistance projects, etc.
  – Establishment work: sanction of posts, recruitment, training, etc.
  – Preparation of draft Regulations, procedures, etc.
  – Competition Advocacy, public awareness and training
• No judicial work is being undertaken
Thank you

Disclaimer: Contents of this Presentation are based on facts and are in no way connected with any issues which is subject-matter of pending litigations before Hon’ble Supreme Court of India